SINGAPORE REPORTS

NEW CHING KEE v. LIM SER HOCK

[A.C.J. (Chua J.) April 1, 1974]
[Singapore — Civil Appeal No. 1652 of 1973]

Practice and Procedure — Application to extend validity of writ — Discretion of court — Not to be exercised in absence of sufficient or good reason — R.S.C. 1970, O.6 r.7(1) & (2).

The appellant sustained personal injuries when he was run into by a motor scooter ridden by the respondent on November 18, 1970. On August 7, 1973 his solicitors issued a writ of summons claiming damages against the respondent. The writ was not served and on the July 31, 1974 an *ex parte* application was filed by the solicitors for an order to extend the validity of the writ for a further 6 months from the date of expiry, *i.e.* August 7, 1974. The learned Assistant Registrar heard the application on August 23, 1974 and after considering the affidavits filed in support thereof, he made an order extending the validity of the writ for a further 6 months.

The writ was served on the solicitors for the respondent on January 3, 1975. On January 7, 1975, the respondent applied to the court to set aside that service and the renewal of the writ. The learned Deputy Registrar heard the application and he set aside the order made by the learned Assistant Registrar and the service of the writ.

The appellant then appealed against the decision of the learned Deputy Registrar.

Held: (1) in the absence of sufficient or good reason, the court will not exercise its discretion in favour of the renewal of the writ after the period allowed for service has expired, if the effect of doing so will be to deprive a defendant of the benefit of a limitation period which has accrued;

(2) in this case the appellant's solicitor had not acted reasonably in the matter and had been negligent in not serving the writ in time;

(3) there was also no sufficient or good reason for extending the validity of the writ in this case and therefore the appeal must be dismissed.

Cases referred to:-

(1) *Heaven* v. *Road & Rail Wagons* [1965] 2 All E.R. 409.
(2) *Battersby* v. *Anglo-American Oil Co. Ltd.* [1945] K.B. 23, C.A.
(3) *Baker* v. *Bowketts Cakes Ltd.* [1966] 2 All E.R. 290, C.A.
(4) *Stevens* v. *Service Window & General Cleaning Co. Ltd.* [1967] 1 Q.B. 359.
(5) *Jones* v. *Jones* [1970] 3 All E.R. 47.
(6) *Easy* v. *Universal Anchorage Co. Ltd.* [1974] 2 All E.R. 1105.

APPEAL IN SUIT.

K. E. Hilborne for the appellant.

T. M. Yap for the respondent.

Chua J.: On the November 18, 1970, the plaintiff, who was standing at a bus stop, sustained personal injuries when he was run into by a motor scooter ridden by the defendant.

On August 7, 1973, Hilborne & Co., solicitors for the plaintiff, issued a writ of summons claiming damages against the defendant.

The writ was not served and on July 31, 1974, an *ex-parte* application was filed by Hilborne & Co. for an order to extend the validity of the writ for six months from its date of expiry *i.e.* August 7, 1974. The application was heard by the learned Assistant Registrar on August 23, 1974, and after considering the affidavits filed in support thereof, he made an order extending the validity of the writ for a further six months.

The writ was then served on Battenberg & Talma, solicitors for the defendant, on January 3, 1975. On January 7, 1975, the defendant applied to the court to set aside that service and the renewal of the writ.

The application came before the learned Deputy Registrar, who, after hearing the parties, set aside the order of the learned Assistant Registrar and the service of the writ.

The plaintiff now appeals against that decision of the learned Deputy Registrar.

Affidavits were filed by Lee Hien Weng, a clerk of Hilborne & Co. According to Lee Hien Weng, the plaintiff instructed Hilborne & Co. in the matter of the accident on November 30, 1970 and that since that date Hilborne & Co. had "proceeded with the matter by obtaining all the relevant information with a view to making a claim on his (plaintiff's) behalf" and that in the meantime, correspondence were carried out between Hilborne & Co. and the defendant's insurers. He further stated that the writ was issued "as the limitation for this claim was beginning to run out". By virtue of section 6(4) of the Limitation Act (Cap. 10) the plaintiff's cause of action would have become time-barred by November 18, 1973.

One wonders why the writ was not served. Lee Hien Weng stated that no attempt was made by Hilborne & Co. to serve the writ "as the writ was issued primarily to preserve their client's claim and also by the request to withhold proceedings and by the correspondence Messrs. Battenberg & Talma evinced a desire to enter into negotiations". Another reason given for not serving the writ was that the files in connection with this matter were temporarily mislaid when Hilborne & Co. moved to new premises and that when the file was discovered an application was made to extend the validity of the writ.

According to the defendant's solicitors no correspondence were entered into between them and Hilborne & Co. They wrote to Hilborne & Co. on three occasions, August 8, 1973, October 23, 1973 and November 1, 1973, but no reply or acknowledgment was received to any of these three letters.

For the purpose of service, a writ is valid in the first instance for twelve months (R.S.C. Order 6 Rule 7(1), and R.S.C. Order 6 Rule 7(2) provides: —

"Where a writ has not been served on a defendant, the court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the court before that day or such later day (if any) as the court may allow."

Mr. Hilborne for the plaintiff points out that this Rule Order Rule 7(2)) varies in wording from the previous provisions dealing with the renewal of writs (Order 8 Rule 1(2)) and submits that the court has a much wider discretion now under the present provisions.

It is true that the words "or for other good reasons" have been removed but in my view in the

ordinary way a writ should not be renewed unless sufficient or good reason for renewal is shown. I think like Megaw J. in *Heaven* v. *Road & Rail Wagons*[1] that the change in wording of the new Order 6 Rules 7(2) as compared with the old Order 8 Rule 1(2) is not material and has not changed the old law in any relevant respect.

The principle or general rule is that in the absence of sufficient or good reason, the court will not exercise its discretion in favour of the renewal of the writ after the period allowed for service has expired, if the effect of doing so will be to deprive a defendant of the benefit of a limitation period which has accrued. This principle has not been deviated from since the judgment of Lord Goddard in *Battersby* v. *Anglo-American Oil Co. Ltd.*[2] and applied in *Heaven* v. *Road & Rail Wagons Ltd., supra,* and *Baker* v. *Bowketts Cakes Ltd.*[3]

Mr. Hilborne makes a point that in the present case the application for renewal of the writ was made before the time of its service has expired. In my view that does not detract from the requirement that sufficient or good reason must be shown before renewal will be granted (*Stevens* v. *Services Window & General Cleaning Co. Ltd.*[4]).

As pointed out by Mr. Hilborne, in exercising its discretion whether to grant or refuse renewal of the writ, the court is entitled to consider and to balance the hardship to the plaintiff which would follow if the validity of the writ is not extended against the hardship which the defendant might suffer through such extension (*Jones* v. *Jones*[5]). Mr. Hilborne says that in considering the balance of hardship in the present case the court should take cognizance of the fact that the plaintiff would have no redress in negligence against his solicitors and that the plaintiff would be left without remedy if the writ is not renewed.

Mr. Hilborne submits that the plaintiff's solicitors have acted reasonably in this matter because whereas it was possible that they might have been able to serve the writ in the last seven days of the validity of the writ it was by no means certain that they could do so and failure to do so would have meant making an application for extension after the validity of the writ has expired.

In *Easy* v. *Universal Anchorage Co. Ltd.*[6] it was held that the fact that negotiations for a settlement were in progress did not afford a sufficient reason for not serving the writ within 12 months of its issue nor did it afford sufficient reason for the court to exercise its discretion to renew the writ and that it was the duty of the plaintiff's solicitors to serve the writ in time even though negotiations were in progress.

The temporary loss of the files by the plaintiff's solicitors is not sufficient or good reason justifying the exercise of discretion to extend the validity of the writ as they were recovered before the expiry of the writ and service could have been attempted then.

I am unable to agree with Mr. Hilborne that the plaintiff's solicitors have acted reasonably in this matter. It is the duty of a plaintiff who issues a writ to serve it promptly. I am afraid the plaintiff's solicitors have been negligent in not serving the writ in time and the plaintiff has a remedy against them.

There is no sufficient or good reason for extending the validity of the writ in this case.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Battenberg & Talma.*

CHAN KUM FOOK & ORS. v. THE WELFARE INSURANCE CO. LTD.

[O.C.J. (Tan Ah Tah J.) September 20, 1975]
[Singapore — Civil Suit No. 1737 of 1972]

Negligence — Accident incurred whilst travelling in the course of employment — Company's motor van driven by employee of company — Whether insurance company liable to indemnify claims against driver — Motor Vehicles (Third-Party Risks and Compensation) Act, ss. 4(3), 8(1).

Insurance — Motor Insurance — Insurers relying on exceptions (ii) and (iii) to s. II of Policy — Motor Vehicles (Third-Party Risks and Compensation) Act ss. 4(3) and 8(1).

The first and second plaintiffs in this case were employees of the Century Engineering Co. (hereinafter called the Company). Whilst travelling as passengers in the company's motor van driven by its employee, one Yong Chan Seng, and in the course of employment, the first and second plaintiffs sustained injuries when the said motor van ran off the road and crashed into a tree owing to the negligence of Yong Chan Seng. The third plaintiff who was the father of the second plaintiff was put to loss and expense. The three plaintiffs claimed damages against the owner of the motor van and Yong Chan Seng.

The motor van was insured under a policy issued by the defendants. The plaintiffs in this case relied on sections 4(3) and 8(1) of the Motor Vehicles (Third Party Risks and Compensation) Act.

The defendants relied on exception (ii) to section II of the policy and denied liability to make any payments to the plaintiffs.

Exceptions (ii) and (iii) to Section II read as follows:—
"The Company shall not be liable in respect of
(i) ...
(ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment
(iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises".

Held: (1) the effect of the words in brackets in exception (iii) is to make the defendants liable in respect of injuries sustained by the first and second plaintiffs who were passengers "carried by reason of or in pursuance of a contract of employment;

(2) judgment having been entered against Yong Chan Seng in the consolidated action, the defendants must indemnify him against the claims of the three plaintiffs.

[Editorial Note: The defendants' appeal (Civil Appeal No. 38 of 1974) was mentioned on November 17, 1975 when the court was informed that they had completely withdrawn their appeal and the judgment sum has been fully paid to the plaintiff.]

Cases referred to:-

(1) *Izzard* v. *Universal Insurance Co. Ltd.* [1937] A.C. 773.